UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/57
11 March 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 10 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Cooperation with representatives of United Nations human rights bodies

Report of the Secretary-General submitted in accordance with Commission on Human Rights resolution 1997/56

Introduction

1. At its fifty-third session, the Commission on Human Rights adopted resolution 1997/56, entitled "Cooperation with representatives of United Nations human rights bodies". In this resolution, the Commission reiterated its concern at the continued reports of intimidation and reprisals against private individuals and groups who sought to cooperate with the United Nations and representatives of its human rights bodies. It also expressed concern at reports about incidents where private individuals had been hampered in their efforts to avail themselves of procedures established under United Nations auspices for the protection of human rights and fundamental freedoms.

2. In the same resolution, the Commission urged Governments to refrain from all acts of intimidation or reprisal against: (a) those who sought to cooperate or had cooperated with representatives of United Nations human rights bodies, or who had provided testimony or information to them; (b) those who availed or had availed themselves of procedures established under United Nations auspices for the protection of human rights and fundamental freedoms and all those who had provided legal assistance to them for that purpose; (c) those who submitted or had submitted communications under procedures established by human rights instruments; and (d) those who are relatives of victims of human rights violations.

3. The Commission requested all representatives of United Nations human rights bodies, as well as treaty bodies monitoring the observance of human rights, to continue to take urgent steps, in conformity with their mandates, to help prevent the hampering of access to United Nations human rights procedures in any way and to help prevent the occurrence of such intimidation or reprisals. The same bodies were also asked to continue to include in their respective reports to the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities or the General Assembly a reference to allegations of intimidation or reprisal and of hampering access to United Nations human rights procedures, as well as an account of action taken by them in this regard.

4. The Commission invited the Secretary-General to submit to the Commission at its fifty-fourth session a report containing a compilation and analysis of any available information, from all appropriate sources, on alleged reprisals against those referred to in the resolution.

I. ALLEGATIONS OF INTIMIDATION AND REPRISALS RECEIVED PURSUANT TO COMMISSION ON HUMAN RIGHTS RESOLUTION 1997/56 AND ACTION TAKEN BY REPRESENTATIVES OF HUMAN RIGHTS BODIES

5. This section contains a summary of the information received pursuant to resolution 1997/56. It covers a variety of situations in which persons have been intimidated or suffered reprisals for having cooperated with United Nations human rights bodies, availed themselves of international procedures, provided legal assistance for this purpose, and/or for being relatives of victims of human rights violations. It does not include cases of human rights violations against human rights defenders per se.

6. In cases in which the victims, whether individuals or organizations, had been in contact with one of the bodies or mechanisms of the Commission on Human Rights, action was generally taken for their protection by the pertinent body or the representative in charge of the relevant mandate of the Commission. In the majority of such cases urgent communications were addressed to the Government concerned. The prompt intervention procedure is described in a previous report to the Commission (E/CN.4/1992/29, paras. 14-18).

7. It is to be emphasized that information included in this report is also reflected in the latest reports presented by each mechanism to the General Assembly or the Commission on Human Rights.

8. As in former years, acts of reprisals reported ranged from veiled threats to extrajudicial killings. Alleged victims were private individuals or members of non-governmental organizations which were or had been sources of information about human rights violations for United Nations human rights bodies. Allegations of cases where persons who had personally met with representatives of United Nations human rights bodies subsequently suffered reprisals for having done so have continued and are most disturbing.

A. Human Rights Committee (see CCPR/C/SR.1632)

9. In its concluding observations to the report presented by Belarus to the Human Rights Committee, the Committee expressed concern about reports of intimidation and harassment of human rights activists by the authorities, including their arrest and the closure of certain non-governmental organizations offices (see CCPR/C/61/cmt/bel/3).

10. In this context, the Committee was informed about the detention on 23 October 1997 of Tatyana Protko, head of the Belorussian Helsinki Committee, by the police in Belarus. Allegedly, as a result, she was unable to attend the session and brief the members of the Committee. Reportedly, the tribunal which sentenced her mentioned in its judgement that she had prepared a report addressed to the Human Rights Committee.

B. Special Rapporteur on extrajudicial, summary or arbitrary executions (see E/CN.4/1998/68/Add.1)

11. The Special Rapporteur intervened on behalf of persons who had cooperated with representatives of United Nations human rights bodies and who had received death threats or whose right to life was said to be at risk. In the cases described below, the Special Rapporteur requested the Governments concerned to take all the necessary measures to protect the right to life and physical integrity of the persons at risk. In one particular case, members of a non-governmental organization who had cooperated with the Special Rapporteur on several occasions were killed.

Colombia

12. Members of human rights organizations who have cooperated with United Nations human rights mechanisms, and particularly with the Special Rapporteur, have been victims of harassment and death threats by members of the security forces or paramilitary groups cooperating with them. The Special Rapporteur expressed particular concern at the increasing number of allegations of death threats against human rights activists in Colombia. According to the information received, human rights activists are very often perceived by security forces as collaborators or auxiliaries of the guerrilla.

13. The Special Rapporteur sent urgent appeals on behalf of the following human rights activists, who were said to be at risk of suffering reprisals:

(a) Belén Torres Cárdenas y Raúl Emilio Ramos, members of the Asociación Nacional de Usuarios Campesinos - Unidad y Reconstrucción ANUC-UR after they provided information on the situation of the internally displaced persons in Colombia to several mechanisms of the Commission on Human Rights;

(b) Gustavo Gallón Giraldo, director of the Comisión Colombiana de Juristas, after he had been accused of drug trafficking, during a debate in the Human Rights Commission of the Senate concerning the opening of an Office of the High Commissioner for Human Rights in Colombia. The Special Rapporteur had already sent an urgent appeal on his behalf in 1996 after he had been accused of providing information to the High Commissioner on Human Rights with the aim of damaging the image of the armed forces.

14. In addition, the Special Rapporteur transmitted an urgent appeal on behalf of members of the Centro de Investigación y Educación popular (CINEP) following the killing of some of its members, Carlos Mario Calderón, his wife, Elsa Constanza Alvarado, and her father Carlos Alvarado Pantoja. CINEP had cooperated with the Special Rapporteur on several occasions.

D. Working Group on Enforced or Involuntary Disappearances (see E/CN.4/1998/43)

15. As in previous years, the Working Group received reports and expressions of concern from non-governmental organizations, associations of relatives of disappeared persons and private individuals about the safety of persons actively engaged in the search for missing persons, in reporting cases of disappearance or in the investigation of cases.

16. In this context, the Working Group sent urgent communications to Governments (prompt intervention procedure), urging the authorities to adopt protection measures, in cases in which relatives of missing persons or other individuals or organizations who have cooperated with the Working Group, as well as their legal counsel, were being subjected to intimidation, persecution or reprisals, in accordance with resolution 1996/70. In such cases, the Working Group requested to be informed of investigations carried out and protection measures adopted (see E/CN.4/1997/34).

Mexico

17. In accordance with its prompt intervention procedure, the Working Group sent a communication requesting the Government of Mexico to ensure the protection of the basic human rights of Silverio García, who was being harassed and threatened by members of the army in Atoyac de Alvarez, after he filed a complaint on the disappearance of Martin Barrientos Ponce.

Colombia

18. The Working Group called to the Government's attention to the harassment to which the family of a missing person was being subjected. According to the information received, the harassment was in connection with their intervention in the penal proceedings against members of the police allegedly involved in the case. Moreover, a friend of the missing person and witness to the proceedings was reportedly killed in February 1997. The Working Group also expressed concern to the Government in connection with information received indicating that in June 1997, a bomb had exploded in the building where the Association of Relatives of Disappeared Detainees in Medellin has its offices. Several persons were injured and the Association's files were destroyed. This Association has actively cooperated with the Working Group. No information or comments were received from the Government in connection with any of these incidents.

D. Working Group on Arbitrary Detention (see E/CN.4/1998/64)

Viet Nam

19. By letter dated 12 August 1997 the Working Group transmitted the case of Ngoc An Phan (religious name Thich Khong Tanh), reportedly detained on 6 November 1994, and accused of, inter alia, having provided information to the President of the Working Group on Arbitrary Detention, Mr. Louis Joinet during his visit to Viet Nam in October 1994. Reportedly on 15 August 1995 he was found guilty on several charges, including that of "communicating material abroad" and was sentenced to 5 years imprisonment.

E. Special Rapporteur on the question of religious intolerance (A/52/477 para. 26)

China

20. The Special Rapporteur sent an urgent appeal requesting information on the detention of Yulo Dawa Tsering, a Tibetan monk, whom the Special Rapporteur had met with during his visit to China in 1995. (See E/CN.4/1996/95, para. 40 and E/CN.4/1996/57, para. 30). The Chinese Government replied to the urgent appeal by denying the Special Rapporteur's allegation that Mr. Yulo Dawa Tsering was under house arrest and deprived of his right to freedom of movement, expression and religion.

F. Special Rapporteur on the situation of human rights in Zaire (now Democratic Republic of the Congo) (see E/CN.4/1998/64 and 65)

21. The Special Rapporteur received information concerning harassment, detentions and other violations of human rights committed by members of the AFDL (Alliance des forces démocratiques pour la libération du Congo-Zaïre) against those who had cooperated with the Special Rapporteur, the joint investigative mission on massacres occurring in eastern Zaire, as well as with the Investigative Team of the Secretary-General. These included:

(1) Bertin Lukando, President of the Coordination Régionale des organisations non gouvernementales de développement (CRONGD) of Maniema and member of the human rights organization Haki Za Binadamu, as well as Ramazani Diomba, Executive Secretary of CRONGD. According to the information received, they were reportedly detained on charges of having informed the United Nations about massacres committed by the ALDF.

(2) Bosange Yema, journalist, reportedly detained on 18 November 1997 accused of being an agent working for the Investigative Team of the Secretary-General. He was reportedly released after two days.

(3) Roger Nsala Nzo Badila, Secretary-General of the Centre National des Droits de l'Homme (CENADHO), detained on 23 November 1997 for 48 hours on charges of cooperating with the Investigative Team of the Secretary-General.

22. Further, the Special Rapporteur was informed that on 10 November 1997, the Comité d'Observateurs des Droits de l'Homme (CODHO) in Kinshasa was reportedly raided by security agents allegedly because of a letter the organization had transmitted to the Investigative Team of the Secretary-General.

23. In addition, it was also brought to the Special Rapporteur's attention that at the end of November 1997, during a meeting with non-governmental organizations and the Minister of Social Affairs, an advisor to the Minister stated that all the problems the Government was having with the United Nations were due to Guillaume Ngefa, President of the Association Zaïroise pour la Defénse des Droits de l'Homme (AZADHO). He further stated that should he go back, he would be killed.

G. Special Rapporteur on the situation of human rights in the Sudan (see E/CN.4/1998/66)

24. The Special Rapporteur was informed that in September 1996, Osman Idris Fadlallah, two weeks after he met the Special Rapporteur in Khartoum at the United Nations Development Programme (UNDP) Offices, was twice intercepted on the street by members of the Sudanese security forces. The second time, he was taken to the security headquarters, where he was threatened and beaten. In August 1997, he was refused an exit visa for medical treatment.

II. JOINT ACTIONS UNDERTAKEN BY REPRESENTATIVES OF HUMAN RIGHTS BODIES

Sudan

25. The Special Rapporteur on the situation of human rights in the Sudan, the Special Rapporteur on questions relating to torture and the Special Rapporteur on violence against women transmitted an urgent appeal to the Government of Sudan. According to the information received, on 1 December 1997 a group of approximately 50 women arrived outside the gate of the UNDP compound in Khartoum to attempt to present a statement to the United Nations Secretary-General through the United Nations coordinator in Sudan against the compulsory military conscription of their sons and brothers to fight the civil war in southern Sudan. Allegedly the women were brutally assaulted and beaten with sticks and rubber hoses by police and security officers. Further, it was alleged that approximately thirty-four of these women were tried the same day and convicted of public offences. They were each fined 10,000 Sudanese pounds, flogged with 10 strokes and then released from detention.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/58
25 February 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 10 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation in East Timor

Report of the Secretary-General

CONTENTS

		Paragraphs	Page
Introduction		1 - 3	2
I.	Update on the good-offices activities of the Secretary-General concerning the question of East Timor	4 - 8	2
II.	Actions taken by the thematic rapporteurs and working groups of the Commission on Human Rights concerning East Timor	9 - 14	3
	Annexes		
I.	Information provided by the Government of Indonesia		8
II.	Information provided by the Government of Portugal		17
III.	Material provided by non-governmental sources		25

GE.98-10657 (E)

Introduction

1. At its fifty-third session, the Commission on Human Rights adopted resolution 1997/63 of 16 April 1997 entitled "Situation of human rights in East Timor". In that resolution the Commission, inter alia, decided to consider the situation in East Timor at its fifty-fourth session on the basis of the reports of special rapporteurs and working groups and that of the Secretary-General. It also decided to encourage the Secretary-General to continue his good-offices mission for achieving a just, comprehensive and internationally acceptable solution to the question of East Timor and in this framework to encourage the all-inclusive intra-East Timorese dialogue to continue under the auspices of the United Nations.

2. By the same resolution, the Commission called upon the Government of Indonesia, inter alia, to cooperate fully with the Commission and its thematic rapporteurs and working groups and to invite these rapporteurs and working groups to visit East Timor, in particular the Special Rapporteur on torture, in line with the commitment undertaken to invite a thematic rapporteur in 1997. It also called upon the Government to undertake all necessary action in order to upgrade the memorandum of intent of 26 October 1994 on technical cooperation into the envisaged memorandum of understanding, as well as to bring about the envisaged assignment of a programme officer from the Office of the High Commissioner for Human Rights to the Jakarta office of the United Nations Development Programme who would have unhindered access to East Timor.

3. The present report has been prepared in response to the above-mentioned decision. The attention of the Commission on Human Rights is also drawn to the progress report of the Secretary-General on the question of East Timor (A/52/349) of 15 September 1997 in which he refers to the activities undertaken in the framework of his continuing good offices.

I. UPDATE ON THE GOOD-OFFICES ACTIVITIES OF THE SECRETARY-GENERAL CONCERNING THE QUESTION OF EAST TIMOR

4. Since the appointment in February 1997 of Mr. Jamsheed Marker as the Personal Representative for East Timor of the Secretary-General, the efforts to revitalize the search for a just, comprehensive and internationally acceptable solution to the question of East Timor have intensified.

5. Following the consultations conducted by Mr. Marker in March 1997 with the Governments of Portugal and Indonesia in Lisbon and Jakarta and his visit to East Timor in the same month, the Secretary-General invited the Foreign Ministers of the two Governments to a meeting in New York on 19 and 20 June with a view to evaluating the format of the tripartite talks and giving them renewed momentum. At the end of the two-day discussions, the two Ministers reached an agreement, on the basis of the new format proposed by the Secretary-General, that the tripartite talks would continue at the working level, rather than at the Ministerial level, and that the delegations of the two sides, to be led by senior Foreign Ministry officials, would meet more frequently under the chairmanship of the Personal Representative of the Secretary-General. It was also agreed that the discussions of the senior

officials would be kept confidential. Since then, three rounds of senior officials' meetings have been held in New York, from 4 to 7 August, from 1 to 3 October and from 5 to 7 November 1997, and another round is scheduled for early March 1998. Despite the absence of a major breakthrough, these discussions have continued to tackle substantive and difficult issues in a constructive and business-like atmosphere.

6. In addition to these working-level talks in New York, Mr. Marker visited Indonesia and East Timor from 16 to 23 December 1997, and Portugal from 18 to 21 January 1998. He held extensive discussions with the Foreign Ministers of Indonesia and Portugal as well as with various East Timorese personalities on how to further move the process forward. In these discussions, the human rights situation in the Territory has been treated at some length. The Personal Representative has maintained consultations with the High Commissioner for Human Rights, which he intends to expand bearing in mind the interdependence of the diplomatic efforts to find a political solution and the human rights situation on the ground.

7. Since July 1997, President Mandela of South Africa has been engaged in an effort to assist the efforts of the Secretary-General on this issue. Through this initiative, the President has lent his prestige, moral authority and his friendly relations with all the parties directly concerned to give added momentum to the continuing efforts to resolve this difficult issue. The Secretary-Gereral has kept in close contact with President Mandela and is highly appreciative of the President's interest and valuable support on this matter.

8. The All-inclusive Intra-East Timorese Dialogue (AIETD), an initiative of the Secretary-General which began in 1995, has continued to make its contribution. From 20 to 23 October 1997, another meeting of the AIETD was held at Krumbach Castle in Austria, with the assistance of the host Government, Austria, and a number of other Member States that contributed financially. The gathering, which brought together 34 East Timorese of diverse political trends, was held under the same terms of reference as the first two meetings held in June 1995 and March 1996. Without addressing the issue of the political status of East Timor, the participants discussed, and proposed in their final declaration, various practical ideas aimed at assisting the search for a long-term settlement of the problem.

II. ACTIONS TAKEN BY THEMATIC SPECIAL RAPPORTEURS AND WORKING GROUPS OF THE COMMISSION ON HUMAN RIGHTS CONCERNING EAST TIMOR

Special Rapporteur on extrajudicial, summary or arbitrary executions

9. The Special Rapporteur included the following information in his report to the Commission (E/CN.4/1998/68/Add.1):

> "214. The Special Rapporteur transmitted allegations regarding violations of the right to life of the following persons:
>
> (a) Reportedly killed by members of the armed forces: Maumesak, aged 17, Filomeno Ailos, Antonio Malea and Norberto, on 29 October 1996

in Ailetę; Manuel Atimeta, on 9 November 1996 between Waihulae and Waguia, Ossu; Monica Guterres, on 9 January 1996 between Liaruca and Ossu; Tomas Sarmento, on 25 September 1996 in Barolau, Manufahi, Same; Fernando Bom, on 30 September 1996 in Soibada; Zeferino Mascarenhas and Marcel Nunes, on 3 October 1996 at Mota Merao, Liaruca; Rui de Jesus, Aniceto and Miguel, on 7 December 1996 in Lepo Bobonaro, Suai; Januario Quintao and Francisco, on 16 June 1997 in Dili; Fernando Lopez, on 8 February 1997 in Beto Barat-Comoro, Dili;

(b) Reportedly killed by members of the police: Andre de Sousa, on 28 April 1996 in Comoro, Dili; Marcos Soares, on 11 June 1996 in Venilale;

(c) Reportedly killed by members of the special armed forces: Jacinto de Sousa Pandal and Luis Xemenes Belo, on 18 September 1996 in the area of Akadira Loibere; David Alex, on 25 June 1997 in Bacau;

(d) Mariano Mendonca, reportedly killed on 4 November 1996 in Berelico, Faturaca, Remexio by a member of the Indonesian Intelligence Service.

215. Furthermore, the Special Rapporteur transmitted to the Government the alleged violation of the right to life of Manuel Soares which occurred in Tanah Abang, Central Jakarta. Manuel Soares, who had reportedly been recruited by the Tiara Foundation - an organization allegedly linked to the military which was reported to recruit hundreds of young East Timorese - was reportedly shot and killed by the police.

Communications received

216. The Government provided the Special Rapporteur with a reply to many of the allegations transmitted during 1997, informing the Special Rapporteur that:

(a) The following persons were killed by members of a group or groups seeking to disturb the security and peace in East Timor: Jacinto de Sousa Pandal, Luis Xemenes Belo, Maumesak, Filomeno Ailos, Antonio Malea, Norberto, Manuel Atimeta, Monica Guterres, Zeferino Mascarenhas, Marcel Nunes, Rui de Jesus, Aniceto and Miguel;

(b) The following names either belong to no one or else cannot be found in the areas mentioned: Marcos Soares, Tomas Sarmento, Fernando Bom and Mariano Mendonca.

217. With regard to the case of Andre de Sousa, the Government indicated that he was wrongly killed by a member of the Mobile Police Brigade, and that the latter was tried and found guilty of murder.

218. Regarding the case of Manuel Soares, the Special Rapporteur was informed that he was a notorious gang leader who was killed on 7 June 1996 in Tanah Abang in a rift with another gang (September 1997).

Observations

219. [...]

220. The Special Rapporteur also wishes to express his concern over the number of killings occurring in East Timor. He notes with deep regret that, despite repeated requests, the Government did not provide him with a reaction to the recommendations made upon his visit to Indonesia and East Timor in 1994 (see E/CN.4/1995/61/Add.1, paras. 77-88)."

Special Rapporteur on torture

10. Information regarding the action taken by the Special Rapporteur on torture with regard to East Timor is described in his report to the Commission (see E/CN.4/1998/38, paras. 114-117 and E/CN.4/1998/38/Add.1, paras. 180-207). Moreover, the Special Rapporteur points out in his report that his outstanding request for invitation to visit Indonesia remains without positive response (E/CN.4/1998/38, para. 4).

11. The Special Rapporteur indicates (paragraph 115) that during 1997 he transmitted to the Government of Indonesia allegations on 14 new cases of torture which occurred in East Timor, as well as 11 urgent appeals; the Government replied to most of the communications transmitted. In addition, he made the following observations:

"116. As the Special Rapporteur observed last year, he 'appreciates the Government's responses in respect of the cases he transmits to it. Despite these responses, he believes that the persistence and consistency of the allegations he receives justify continuing concern with the issue. In particular, he does not consider simple denials by law enforcement or security agencies of detention or ill-treatment during detention as conclusive'.

117. He considers that the continuing unwillingness of the Government to invite him to visit Indonesia and East Timor could be construed as being aimed at avoiding direct and independent evaluation of the allegations and the official denials."

Special Rapporteur on violence against women, its causes and consequences

12. The Special Rapporteur referred to East Timor in her report to the Commission (E/CN.4/1998/54, paras. 26-27). She indicates, in particular, that she "has received a large number of submissions regarding sexual violence in East Timor by Indonesian Security Forces. Among the violations complained of are sexual violence, rape, forced marriage, forced prostitution and the intimidation of female relatives of suspected activists. Indonesian State authorities have not responded in accordance with their international obligations. No cases have thus far resulted in prosecution" (paragraph 27).

Working Group on Arbitrary Detention

13. The Working Group adopted opinion No. 5/1997, included in its report (E/CN.4/1998/44/Add.1), regarding the following East Timorese in detention:

Cesaitino Correla, Sesario Freitas, Orlando Morreira, Jacinto Pedro da Costa Xavier, Jose Armindo Morreira, Aniceto Soares, Jose Gomes, Miguel Correira, Francisco Amat, Pedro da Luz, Luis Pereira, Cesaltino Sarmento Boavida, Jose Soares, Moises Freitas Morreira, Alipio Pascoal Gusmao, Paulino Cabral, Armindo da Costa, Mario Jose Maria, Miguel de Jesus, Antonio Gusmao Freitas and Marcelino Fraga.

The opinion reads as follows:

"6. The Working Group is informed through the source that these 21 persons allegedly participated in riots which broke out on 10 and 11 June 1996 as a result of a 'religious' conflict between Catholics and Muslims which was apparently provoked by a number of the Indonesian army. The above-mentioned 21 persons were reportedly convicted of violence against people and property under Article 2, Part 1 of the Emergency Laws No. 132, of 1951. [...].

7. In the absence of a response from the Government and taking into account the allegations made, the Working Group notes that [...] none of them was granted any legal representation during the course of their trial. The Court allegedly did not respect the presumption of innocence; nor was the judgement of the Court published. It also emerges from the facts as stated that the accused were compelled to testify against themselves and to confess to their guilt. All this proves that the accused were not granted a fair trial in contravention of article 10 of the Universal Declaration of Human Rights. In these circumstances the Working Group believes that the detention of the above-mentioned persons is in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, relating respectively to the right not to be arbitrarily detained and the right to a fair trial, and that the contravention is of such gravity as to confer on the deprivation of liberty an arbitrary character."

Working Group on Enforced or Involuntary Disappearances

14. Information regarding the action taken by the Working Group with regard to East Timor is included in its report to the Commission (E/CN.4/1998/43, paras. 218-225). The report indicates that between December 1996 and December 1997 the Working Group transmitted to the Government of Indonesia, under the urgent action procedure, 57 new cases that reportedly occurred in East Timor. The report also indicates the following:

"221. During 1997, there has been a sharp rise in the number of allegations received by the Working Group reporting that individuals in East Timor have been arrested by the Indonesia military or security forces on suspicion of being involved in subversive activities. In most of the cases reported to the Working Group, the sources alleged that the individuals are being held incommunicado and they express a fear that the victims may be subjected to torture or extrajudicial, summary or arbitrary executions. The sources also report that attempts by family members to locate the disappeared individual by making inquiries with government officials are routinely unsuccessful.

222. During the period under review, the Government provided replies in 55 individual cases. In the majority of these cases, the Government replied that the individuals were never arrested and that they were leading their normal lives. In 12 of the cases, the Government informed the Working Group that the subjects had been arrested on charges of being involved in subversive activities. Based upon its findings that in the majority of the reported cases the individuals had never been arrested and were leading normal lives, the Government has questioned the credibility of the source. [...]

Observations

223. [...]

224. [...]

225. With respect to the Government's suggestion that the Working Group be more selective in choosing its sources, the Group wishes to point out that in accordance with its mandate and methods of work, it functions primarily as a channel of communication. It therefore has an obligation to transmit all alleged cases of disappearance which fulfil the Working Group's criteria for admissibility to the Government concerned. It is the responsibility of the Government to investigate these allegations and repudiate them in cases in which the information is found to be inaccurate."

Annex I

INFORMATION PROVIDED BY THE GOVERNMENT OF INDONESIA

1. By letter dated 27 November 1997, the Permanent Representative of Indonesia to the United Nations Office in Geneva forwarded to the Secretary-General a document containing the following information:

"Introduction

1. At the fifty-third session of the 1997 Human Rights Commission, it was apparent that despite the continuing progress of the human rights situation in East Timor, certain Western countries continued to ignore the fact, embarking on a confrontational approach and forcing a draft resolution on the human rights situation in East Timor. The wording of this draft resolution went against the principle of objectivity and non-selectivity in dealing with human rights issues, making it totally unacceptable to Indonesia. The adoption of the resolution, by only 20 votes out of the 53 members of the Commission, confirmed the malicious motivation behind this draft resolution, which was only to score points against and embarrass Indonesia.

2. Notwithstanding such a resolution, Indonesia is committed to the promotion and protection of human rights in Indonesia, including the province of East Timor, a notion fully embedded in the country's Constitution. In this regard the Government of Indonesia has always cooperated with all the United Nations human rights mechanisms including procedures with all the information they may have requested which is systematically incorporated in their respective reports presented at every session of the Commission on Human Rights.

3. In 1997, extensive reports on human rights violations in East Timor were written by various international NGOs, in particular by Amnesty International and Human Rights Watch. The alleged abuses range from torture, arbitrary detention and extra-judicial execution to the elimination of the cultural and religious identity of the East Timorese people. While failing to verify the information provided by third-party sources, which constitute virtually the entirety of these reports, and as admitted by many of the authors, these NGOs biased perception of the situation in East Timor contributed to the general lack of objectivity and the inaccuracy of their reports.

4. While acknowledging that human rights violations still occur in East Timor, since no country can claim to have a perfect human rights record, they are clearly isolated incidents and in no way reflect government policy. Regular attempts are made to keep these occurrences to a strict minimum, however it is an on-going process which takes time and coordinated efforts to improve.

Measures to improve fundamental human rights

5. Indonesia is only too aware of the essence of dignity, self-reliance and basic human rights as it experienced all forms of

deprivation during the 350 years of colonial rule. The Indonesian people and Government will continue to give their full support to the realization of all basic human rights. In addition, Indonesia fully adheres to the international community's efforts in the field of promotion and protection of human rights based on the principles of respect of sovereignty, non-interference, constructive dialogue and cooperation.

6. The Government of Indonesia believes that sustainable development is the only viable means of promoting the fundamental rights of the people. Both the Indonesian Government and the provincial Government in East Timor are working closely together in a broad range of social and economic development areas to improve the quality of life of the people of East Timor. In addition to restoring law and order in all parts of the province and improving the administrative system and government of the province, efforts are also focused on the infrastructures and on raising the level of health, housing, education and nutrition of the population, as well as on developing public social services. Unfortunately, the major achievements in these fields are simply ignored by critics.

7. These efforts have produced significant results, as evidenced by the tenfold increase in East Timor's per capita income, from US$ 40 before the integration to US$ 400 today. Education and health facilities now exist in sharp contrast with centuries of Portuguese neglect. When the Portuguese left the territory, East Timor only had 2 hospitals and 14 clinics with 3 doctors and 3 dentists serving the entire population of 625,000. Today, there are 11 hospitals and 332 village health centres, staffed by 398 doctors and 40 dentists, assisted by over 1,500 paramedics, serving a population of around 900,000. With regard to education facilities, in the mid 1970's there were 50 schools and no colleges in East Timor. Today, there are 30 kindergartens, 715 elementary schools, 114 junior high schools, 58 senior high schools and 3 colleges of higher education and the University of East Timor.

8. Development in East Timor is currently focused on the expansion of economic sectors, including industry, agriculture and services with a priority given to the development of human resources. The Government believes that the quality of human resources will influence the solution of various development problems, not merely those of productivity and economic growth, but also inequality, poverty and national instability. As a concrete step, the emphasis is now on training enough native East Timorese teachers to replace those who came from outside the province. Graduates of East Timor high schools and colleges are being encouraged to pursue higher education, not only in the province, but also at other universities in Java and Bali. Today, over 1,000 East-Timorese students continue their studies at several institutes of higher education.

9. The Government of Indonesia strongly upholds the goal of sustained economic development in the province in the belief that its effects will certainly reinforce the process towards attaining a prosperous society

where the human rights of all people are fully respected. Such changes cannot materialize overnight, but progress is an evolutionary manner which requires patience and perseverance.

[...]

The protection of the East Timorese people, its culture and religions

11. There have been allegations that the Indonesian Government is systematically destroying the cultural and religious identity of the East Timorese people. On the contrary, Indonesia is a land of diversity, comprising about 350 distinct ethnic groups and almost as many languages, as well as several different religions. The Government is under the obligation, stated explicitly in the Constitution, to preserve this ethnic, religious and cultural diversity. Moreover, respect and tolerance for different cultural and religious traditions are at the heart of the Indonesian national philosophy, Pancasila. Indonesia is committed to its national ideology of Pancasila and the principle of 'Unity in Diversity', mutual respect and tolerance are thus guaranteed.

12. What is significant is that the people of East Timor, who used to live in a largely Portuguese-catholic environment, experienced a major change following integration in 1976, especially in terms of Church-Government relations. In this context, East Timor is now part of a bigger political entity, the Republic of Indonesia, where the majority of the population is Muslim. Many critics of Indonesian policy in East Timor have argued that a policy of destroying East Timorese culture and religion has begun. It is also argued that by undertaking various family planning measures aimed at sterilising Catholic men and women to reduce their numbers, by facilitating the migration of the largely Muslim pendatang (outsiders) and by undertaking 'anti-Church' activities, Indonesia aims to limit the number of Catholics in East Timor. Many have pointed out that this is clearly visible in the increased number of Muslims in East Timor, in the many senior positions they hold in the political and economic sectors, etc.

13. What is clear is that after 450 years of being accustomed to essentially catholic traditions and life patterns, since 1976 the East Timorese have had to come to terms with another environment through becoming a part of Indonesia. However, to jump to the conclusion that with this change the culture and religions of the East Timorese people are to be destroyed is simply not true.

14. This is borne out by the facts. Since integration in 1976, the Christian faith has greatly expanded in East Timor, with the State playing an important role in this growth. The Indonesian Government has provided considerable financial resources and granted scholarships to many East Timorese, enabling them to undertake advanced studies at catholic seminaries in Flores, Malang and Yogyakarta.

[...]

15. The Government of Indonesia consistently promotes religious tolerance in East Timor. An Interreligious Youth Dialogue was held on 8 July 1997 in Dili, in which it was agreed that the pluralism of religious life in East Timor should not be seen as a factor of divisions, but as a form of unity in diversity, as in any other part of the country.

16. Concerns have been expressed that the East Timorese (Putra Daerah) are being systematically discriminated against in favour of other Indonesians, and that they are threatened of being outnumbered by the outsiders (pendatang), in a policy designed to subjugate the locals politically, economically and socio-culturally. It is said that this is mainly due to the fact that all the key jobs in the province are in the hands of the outsiders. In this regard, what cannot be denied is that the East Timorese, due to Portuguese neglect, are still backward and lack the skills of the outsiders. The consequence is that the economic activity and progressional positions are not always in their hands. This, however, is due not so much to a deliberate policy of discrimination as to a situation where the East Timorese are simply not ready yet to take on the jobs. Nonetheless, many efforts have been undertaken to promote the East Timorese, in all sectors of the economy and the administration, even though they may not always have the necessary skills. As current figures show, in addition to the local Governor of the East Timor province, 10 out of 13 Bupatis (heads of district) are locals, as well as all heads of local governmental offices. In addition, out of 18,257 civil servants in East Timor, 13,350 are locals.

17. Likewise, the suggestion that Indonesia is undertaking a policy to eradicate Portuguese culture and heritage in the province is totally untrue. As long as Indonesia continues to subscribe to the national ideology of Pancasila and adopt the principle of 'Unity in Diversity', East Timor's special circumstances as a largely Catholic society will not be seen as a threat to the diverse but unitary character of Indonesia.

[...]

18. At the same time, the Tetum language is used in Church activities and in all of the schools run by the Church. They have not been penalized in this regard.

[...]

Access to East Timor

19. An allegation frequently made by many Western critics, including those who support the FRETILIN (Frente Revolucionaria de Liberaçâo Timor Este Independente) and Portugal, is that despite the 'opening' up of East Timor in 1989, it has remained essentially a 'closed' province, sealed off from the outside world. The following facts will prove that this is not the case.

20. In any part of the province, communications with the outside world are very easy. There are daily flights to and from the province and sea crossings are even more frequent. There are 10 sea ports and 9 airports in the province. More important, anyone in East Timor is able to communicate by telephone or facsimile as easily as in any other parts of the country. As for Cyberspace technology, it is not alien to the province.

21. There are no restrictions on people travelling in and out of the province. On the contrary, since 1989, tourism has begun to play an important part for the local economy and has been encouraged by the Government. Indonesian as well as foreign tourists are a common feature of daily life. [...]

22. In addition, East Timor continues to be visited by numerous foreign personalities, dignitaries and members of the diplomatic corps.

[...]

23. It has always been the practice of certain quarters to manipulate and exploit every event taking place in East Timor, especially during visits by foreign dignitaries, by instigating violent demonstrations and provocations intended to embarrass Indonesia and to attract international attention to their cause. Hence the Government of Indonesia is reticent to take chances by allowing highly publicized visits by foreign dignitaries, which often have detrimental consequences for the people of East Timor.

24. Anyone in the province can have a direct access to world news through both printed and electronic media. In addition, there are approximately 300 newspapers and magazines in Indonesia, and those with a nation-wide circulation are available in the province. In 1982, the weekly Dili Post was published as the first local newspaper. In 1986, a second local paper the Suara Timor Timur (The Voice of East Timor) with a weekly issue. On 1 February 1993, it started to appear daily and today it has daily circulation of 2,500 copies. There are also 52 foreign media representatives and 10 foreign news agencies in Indonesia which have free access to East Timor.

Problems in East Timor and the role of the military

25. The East Timorese are clearly committed to being a part of Indonesia and, along with their other Indonesian fellow citizens, are actively engaged in a common effort to develop the province to bring it to the same level as the others. On 29 May 1997, the East Timorese people participated for the fourth time in the national general election. More than 80 per cent (368,002) of the 450,772 eligible voters in East Timor exercised their right to vote for one of the three contestants in the election. This huge turnout happened despite the repeated attempts by certain quarters to intimidate and terrorize people in order to prevent them from exercising their right to vote by resorting to violence in the run up to the election, resulting in the death of 14 innocent civilians and inflicting many casualties. The

successful implementation of the general election in East Timor once again shows that the people have reiterated the aspirations and political choices they first made 21 years ago, when they opted in favour of integration with Indonesia.

26. However, it is a fact that a handful of separatists are still pursuing the idea of an independent East Timor, although their number has steadily dwindled. To this end, they manipulate and exploit young and educated East Timorese who are disenchanted because they cannot find suitable employment.

27. Although Indonesia has succeeded in raising the educational standards of the province and achieving more than 90 per cent literacy in the province, unfortunately job opportunities cannot match the expectations of all these well educated young people who are joining the ranks of the discontented unemployed. Today, there are some 18,000 East Timorese, educated jobless young people, who have become the target of manipulations and exploitation by anti-integration groups for their own ends.

28. A number of expatriate East Timorese, while living in comfort overseas supported by Portugal, try to undermine the Indonesian Government's efforts in East Timor. They not only manipulate events taking place in East Timor in such a way as to discredit Indonesia overseas, but also mastermind and instigate riots in East Timor. This is clearly reflected by the statement of Ramos Horta, one of the so-called East Timorese leaders in exile, in a 1994 interview with the Portuguese publication Publico, when he claimed responsibility for instigating demonstrations and other such disturbances in Dili and Jakarta.

[...]

29. Anti-integration groups, masterminded by FRETILIN, are increasingly involved in terrorist activities which take the lives not only of members of the Armed Forces but also of civilians who refuse to cooperate with them.

[...]

30. A devious terrorist plan devised by the anti-integration group known as 'Brigada Negra' was uncovered following the arrest of two of its members in September 1997 in Dili; they were caught red-handed while smuggling 20 bombs. The Police also seized 44 rounds of ammunition for M-16 rifles, 24 bullets for a Colt-30 and an FN-45 handgun, as well as a number of confidential documents. It was later discovered from the investigation that the bombs, which had been assembled by the Demak group, central Java, were to be used to destroy public facilities in Dili and to sabotage the swearing-in ceremony of the newly re-elected Governor of East Timor, Mr. Abilio Jose Osorio Soares.

[...]

32. Aside from the terrorist activities conducted by the separatist group mentioned above, there are continuing allegations suggesting that the human rights abuses in the province are linked with the presence of the Armed Forces. Some critics say that this presence in the province is excessive. While on the one hand, the Armed Forces are accused of acting in too restrained a manner in ridding the territory of separatist groups in order for the situation in East Timor to return to normal, on the other hand, their role in the development process throughout the country should be better understood and not be underestimated.

33. The Armed Forces emphasize that territorial operations or civic missions should be a combined effort by the military, government agencies and the local population. These missions, covering all the 27 provinces, are routinely conducted to improve the overall condition of the rural areas. In East Timor, as in all other provinces, the objectives of the military civic missions are first and foremost to combat poverty and underdevelopment as well as to serve and protect the people.

[...]

34. There is little doubt that the remnants of the FRETILIN movement continue to pose a threat to the security in the province. The security problem in the province is a national issue, especially since November 1991, which saw the start of chronic civil unrest. A serious law and order problem remains, combined with various notorious trouble spots in the province, both of which warrant a sizeable military presence.

35. Furthermore, there is strong concern that, without the presence of the Armed Forces to serve as a stabilizing factor in the province, a full-blown civil war could breakout as deep-seated divisions continue to exist within the East Timorese society. A fundamental gap dating back to the Portuguese era continues to exist between the various East Timorese factions in the province, who would not miss the opportunity to settle old scores if they had the chance to do so. Thus the Armed Forces perform a valuable function in keeping the antagonists at bay, ensuring the peace in the province, while providing an environment where national reconciliation among the various factions can take place.

36. Human rights abuses by the military do occur from time to time due to human failure as well as through war-like situations, particularly vis-à-vis the armed insurgents. However, they do not reflect government policy in any way. Attempts have been, and continue to be made to minimize the occurrence of those abuses and to punish the culprits. Incidents such as the shooting of civilians by the military in East Timor, as in Dili in November 1991 and in Liquiça in February 1995, have been appropriately dealt with and those responsible have been punished with prison sentences and/or administrative and disciplinary measures.

Allegations of torture, arbitrary detention, summary execution and disappearances in East Timor

37. Allegations continue to be made that torture, arbitrary detentions, extrajudicial executions and involuntary disappearances are common in East Timor. Not only do those allegations ignore the relentless efforts made by the Government of Indonesia to promote and protect human rights in East Timor, but they are not supported by any corroborative evidence and are simply fabrications aimed at discrediting Indonesia. The Government of Indonesia consistently cooperates with the United Nations human rights mechanisms and readily submits formal clarifications after carrying out thorough investigations on all allegations of human rights abuses in East Timor.

38. From time to time, the Government of Indonesia receives communications from relevant United Nations human rights mechanisms with regard to allegations of torture, arbitrary detention and involuntary disappearance in East Timor. Regrettably, the authorities usually encounter difficulties in identifying individuals mentioned in the communications, as the names or the stories given do not always match the reality, the latter usually being incomplete and/or incorrect. The fact that these allegations of human rights violations are based on fictitious data from dubious sources suggest that they are a means of discrediting Indonesia. It is equally deplorable that certain quarters, particularly non-governmental organizations such as 'the East Timor Human Rights Centre' based in Australia, never fail to send a communication on every single arrest, detention or murder involving East Timorese people, without first taking the trouble of verifying the facts, or worse, that they actually invent them.

39. It would be preposterous to claim that brutalities and ill-treatment by the police and military personnel do not occur in Indonesia. Unfortunately, such brutality and ill-treatment do occur. However, the Indonesian legal system recognizes the right for those who have not been given a fair treatment during their arrest and/or detention to apply for a pre-trial hearing in order to sue the authorities concerned. This right is firmly inscribed in the Indonesian Code of Penal Procedure and is repeated several times in its articles 77, 81, 95, 96 and 97. In addition, the transparency of legal proceedings is guaranteed in all parts of Indonesia and no one in any single district is denied legal aid. Hence, it is not likely that any victim of unfair treatment, either during arrest and/or detention, would appeal to the international human rights mechanisms before having exhausted all available national remedies, therefore suggestions that they do can only be construed as a denigration campaign against Indonesia.

40. With regard to prisoners and detainees in East Timor, the Government of Indonesia appreciates the continued cooperation with the International Committee of the Red Cross (ICRC), and particularly the latter's continued assistance in efforts to further improve the living conditions of prisoners and the sanitation of prisons. The Government continues to grant the ICRC regular access to prisoners and detainees

everywhere in Indonesia and more particularly in East Timor. During their visits, the ICRC delegates are also granted free access to anyone they wish to meet. Both the Government and the ICRC continue to work closely in clarifying inaccurate information regarding the circumstances of prisoners and detainees.

41. Regarding allegations on extrajudicial executions in East Timor, it is the practice of the anti-integration groups who perpetrate terrorist acts in the province to always claim that the army is responsible for the killings that they themselves perpetrate on those who refuse to cooperate with them. A recent example of this practice is the attack on the Castelo family in Irara, Los Palos, on 28 May 1997 which saw the killing of seven civilians. [...] Initially, the group claimed that the army was responsible for the killing because Castelo himself had once been suspected of being part of a clandestine network. In reality the contrary was true and the group took responsibility for this barbarous act.

[...]"

Annex II

INFORMATION PROVIDED BY THE PORTUGUESE GOVERNMENT

On 30 January 1998, the Government of Portugal sent a memorandum containing information about the following human rights issues:

"POLITICAL PRISONERS

In spite of the Commission's recommendations, no East Timorese political prisoners were released during 1997. In July, President Nelson Mandela called for the release of East Timorese political prisoners, in particular Xanana Gusmao with whom he met during his visit to Indonesia earlier that month. Mr. Mandela stressed that 'unless the political leaders, including Xanana Gusmao are set free, it will not be possible to normalize the situation in East Timor'. In spite of this strong political sign from one of the most respected and charismatic world leaders, the Indonesian Government has made no move in this direction.

Furthermore, East Timorese continue to be persecuted for the peaceful expression of their beliefs. In its 1997 annual report, Amnesty International indicated that at least 22 East Timorese prisoners of conscience were serving prison sentences of up to life imprisonment.

ARBITRARY ARREST AND DETENTION

During 1997, a pattern of widespread arbitrary arrests and detentions, following civil disturbances and the increase of the activity of the armed resistance, was registered throughout the territory. [...] In February, four days of civil unrest in Viqueque led to the arrest of over one hundred people. The Jakarta Post reported the incident as having been started when a group of pro-integration youths attacked a group of church activists. Fighting continued for four days before the military intervened. The East Timor deputy police chief, Colonel Atok Rismanto was quoted by Agence France Presse as saying that a total of 109 people had been arrested and were being questioned to determine those who would become suspects in the case. According to Amnesty International, 105 people were later released, many of whom had been tortured or ill-treated while in custody [...].

EXCESSIVE USE OF FORCE BY THE SECURITY FORCES

A pattern of violence and abuse by police and the military in dealing with peaceful demonstrations or civil disturbances, including beatings, shootings, arbitrary arrest and detention was observed on various occasions.

On 23 March, during the visit to Dili by the Personal Representative of the Secretary-General, demonstrators gathered outside Hotel Makhota, where he was staying, in an attempt to bring their

concerns to his attention. According to reports, the demonstration began peacefully but was violently dispersed by police and troops, who sealed off the hotel entrances.

On 29 March, Reuters reported the results of the Indonesian National Commission for Human Rights' (Komnas HAM) preliminary investigation into this incident. After visiting those detained at Becora prison and those under arrest at the military hospital, Komnas HAM condemned the level of brutality and confirmed that a total of 37 protesters had been beaten: 'they have swollen eyes, mouths, backs and chests. Some have not eaten for four days because they cannot do it as a result of the beating'.

On 14 November, a confrontation broke out at the University of East Timor in Dili, between students and members of the security forces. At least five youths are known to have been wounded by gunfire, although the security forces claimed that they had only fired warning shots in the air. According to the East Timor Human Rights Centre, 16 students were arrested immediately after the confrontation.

One of the students, who received a life-threatening wound in the neck, was forcibly removed from a vehicle of the International Committee of the Red Cross (ICRC) by police. This brutal action blatantly disrespected ICRC's humanitarian role and prompted the organization to make a formal protest to the Indonesian authorities (ICRC News 97/46). Although the Indonesian authorities acknowledged the incident, the security forces' behaviour was downplayed.

On 24 November, Indonesia's National Commission for Human Rights (Komnas HAM) announced findings on a preliminary inquiry into the incident. According to Reuters, Komnas HAM stated that 'based on information from official and reliable sources, acts of violence, which were a violation of human rights, were found. For example, students suffered gunshot wounds, their teeth were smashed, faces swollen and bruised as a result of being hit'.

TORTURE

East Timorese taken into military and police custody are regularly subjected to torture and ill-treatment and are routinely denied access to legal counsel, medical treatment and their families. The risk is much higher when the identity of those arrested and their place of detention are not disclosed and before people have been formally charged with a criminal offence. [...]

On 6 February, six people were arrested in the hamlet of Nassuta, Ulmera Village and taken in for questioning to the Liquica district command. Some of the men were given electric shocks and one of them, Natalino Soares, was reportedly forced to agree to become an informant for the military. They were released the following day (Human Rights Watch/Asia; September 1997, Vol. 9, No. 9 C).

On 30 April, five East Timorese were arrested in the hamlet of Metagou on charges of having contact with guerrillas. They were brought to the police command in Bazartete where they were beaten with rifle butts and given electric shocks (Human Rights Watch/Asia; September 1997, Vol. 9, No. 9 C).

On 26 March, a joint team of Kopassus (the Indonesian special forces) and the youth militia Gardapaksi, arrested Vicente da Costa on suspicion of having contact with the guerrillas. He was reportedly tortured with lighted cigarettes in Kopassus Post No. 1 before being released on 28 March with his body covered with burn marks (Human Rights Watch/Asia; September 1997, Vol. 9, No. 9 C).

Luis Afonso, a 19-year-old student, was arrested on suspicion of involvement in the beating of an intelligence agent as well as the police commander Lt. Col. Beno Kilapong, on 24 December 1996, following Bishop Belo's return home after having received the Nobel Peace Prize. He was arrested without warrant and taken to the district police command. During interrogation, he was ordered to strip, and interrogators proceeded to torture him until he mentioned everyone he could think of that had taken part in the incident. According to his lawyer, he was hit over the head with a plastic chair, his head was put in a plastic bag and his genitals were burned with lighted cigarettes. The fingernails of his thumbs and big toes were also pulled out (Human Rights Watch/Asia; September 1997, Vol. 9, No. 9 C).

Eight East Timorese detained, in September 1997, in Dili and in Semerang who were allegedly in possession of explosives were reportedly subjected to ill-treatment and torture, including electric shocks. One of them, Constancio dos Santos, has suffered the severance of two of his fingers (Amnesty International UA ASA 21/80/97).

On 11 September, Sabino Barbosa Ximenes, was detained in Dili by members of the Special Intelligence Unit. He is believed to have been taken to the Police Resort Headquarters (POLRES). Allegedly, he was accused of being a member of the East Timorese clandestine resistance. Sources have reported that on the day of his arrest he was taken to a torture centre in Colmera, Dili, where he was subjected to electric shock, burnt with cigarettes, cut with razor blades and had his fingernails pulled out (ETHRC, Ref. UA 27/97).

On 1 January 1998, members of the mobile brigade (BRIMOB) arrested Elizio Pinto Guterres Soares, an East Timorese university student living in Semerang, following an argument between students and police who reportedly ordered them to stop the New Year's eve party they were holding, claiming it was disturbing the Muslims in their fasting month. Elizio Soares was taken to police headquarters for questioning where he was kicked on his side several times until one of his ribs was broken and he collapsed (ETHRC, Ref. R2/98, 15/01/98).

In his report to the fifty-third session of the United Nations Commission on Human Rights, the Special Rapporteur on torture referred to 10 oral accounts from East Timorese whose testimony he received

during his visit to Lisbon, from 5 to 6 September 1996. These victims made allegations of torture during detention in custody of Indonesian police or the military, including cigarette burns, severe beatings, electric shocks, extraction of nails, immersion in a water tank, placing the victim's hand or foot under a chair or table leg which the interrogator then sits on. The Special Rapporteur reported that with regard to his meetings with alleged victims of torture or ill-treatment in East Timor, he found several of their stories (which he subjected to close examination) credible.

UNFAIR TRIALS

The pattern of abuse does not cease when people are formally charged with a criminal offence. Political trials in East Timor fall short of international standards. Elements of unfairness include denial of access to independent legal counsel, withholding of information from the defendants, use of testimony extracted under torture or without the presence of lawyers, refusal to hear witnesses for the defence. Furthermore, Indonesia's Criminal Code, in particular 'hate-sowing' articles which punish expressing 'hatred' towards the Government are frequently used in East Timor to imprison individuals engaging in peaceful political activities.

Several East Timorese are currently detained and awaiting trial for their involvement in peaceful demonstrations or for their alleged involvement with the armed resistance or the clandestine front, including 17 people who have been charged under the 'hate-sowing' articles and 16 facing charges of assault for their involvement in a demonstration to bring their concerns to the attention of the Special Representative of the Secretary-General of the United Nations on 23 May 1997.

Another 16 East Timorese have been charged in relation to the disturbances in Dili, on 24 December 1996, on Bishop Belo's return from the Nobel Peace Prize award ceremony.

On 11 December 1997, two East Timorese men were sentenced to death after being found guilty of participating in an ambush on a truck carrying members of the Indonesian security forces. This is the first time the death penalty has been handed down by courts in East Timor since its occupation by Indonesia in 1975. Francisco da Costa (36) and Luis Maria Silva (57) were tried by the Baucau District Court. They were charged with murder, separatist activities and illegal possession of firearms. The two men were defended by court-appointed lawyers because their families were afraid to appoint their own lawyers. [...]

At least 53 other East Timorese are currently detained and facing trial for their alleged involvement in the attacks during the elections, in May (AI; ASA 21/90/97).

EXTRAJUDICIAL EXECUTIONS AND DISAPPEARANCES

During his visit to Indonesia and East Timor (3-7 December 1995), the High Commissioner for Human Rights recommended the continuing investigation of the violent incident of 12 November 1991 and asked the Government of Indonesia to pay compensation to the families of the victims. Although the Indonesian authorities have recognized responsibility, families of those who were killed in the incident have received no compensation. Furthermore, except for Kamal Bamadhaj, the only foreigner killed, the bodies of the victims were never returned to their families. No new efforts were made to account for those still missing. Establishing the truth about the past and ensuring adequate redress for victims and their families would contribute enormously to the efforts at finding a peaceful and lasting solution to the problem of East Timor.

On the morning of 25 June, David Alex (44), second in command of Falintil, was captured along with five other members of the armed resistance near Baucau. According to the Indonesian authorities, David Alex was shot during the confrontation with the military prior to his arrest and died in hospital, on the night of 25 June, as he was receiving treatment at a hospital in Dili. Another military source, however, was quoted by Agence France Presse as saying that David Alex died in a helicopter as he was being transported from Baucau to Dili. He was buried at around 8.30 a.m. on 26 June, a day after he was captured. The military allegedly refused to return the body to his family and no autopsy was ever performed. Authorities claim that the family was shown photos of Alex after his capture and his death. Alcino da Costa, Alex's 15-year-old son, said he was summoned to witness the burial, but when he arrived at the cemetery, accompanied by the International Committee of the Red Cross, the burial had already taken place, and the military personnel simply pointed out the grave. Although the commander of the army division, Col. Sidabutar, announced that he would not oppose an independent investigation into David Alex's death, no such inquiry has taken place.

Concern is still held for the other five men arrested with commander David Alex, who are still supposedly being held in incommunicado military custody. Three of the men were moved to Dili although access to them remains restricted; the whereabouts of the other two are still uncertain.

On 14 January 1998, Reuters reported that the bodies of four East Timorese men had been found floating in a river by villagers. Francisco Martins Dias, a local district chief, told Reuters the four men were among a group of eight who had been abducted from the village of Coilima on 3 January by a group of unidentified armed men believed to be linked to the military. Two of the victims appeared to have died from gunshot wounds and the other two of injuries caused by sharp objects.

HUMAN RIGHTS VIOLATIONS AGAINST WOMEN

Women in East Timor are particularly vulnerable to gender specific human rights violations, including rape and sexual harassment. These violations often go unreported due to the lack of independent monitoring and because victims of sexual abuse are less likely to report their cases. Women who are taken in police or military custody are frequently subjected to sexual abuse.

Celina da Costa (20) and Olga Quintao Amaral (19) were among the 33 youths detained at Becora prison for their alleged involvement in the demonstration that took place at the Mahkota Hotel, in Dili, on 23 March. It has been alleged that, on the day of their detention, they had their clothes torn and were severely beaten and raped by members of the Indonesian military (ETHRC, Bi-Annual Report of Human Rights Violations in East Timor, 30/08/97).

Some women are harassed simply because a family member is suspected of being involved with the armed resistance or the clandestine front. Beatriz Ximenes' husband, David Dias Ximenes was arrested on the suspicion of being the mastermind behind the 28 May assault on BRIMOB headquarters. On 3 June, she was picked up by the police and told that she was being taken to see her husband's lawyer. She was in fact taken to a police station in Comoro and interrogated. She was released at around midnight that day but it is believed she continues to be subjected to intimidation (ETHRC; UA 12/97).

ASYLUM BIDS AT FOREIGN EMBASSIES IN JAKARTA

During 1997, 30 East Timorese sought asylum in several foreign embassies in Jakarta. All, except six who requested asylum at the Austrian Embassy on 19 September, have been allowed to leave the country and are currently living in Portugal. The Indonesian authorities have refused Avelino Coelho da Silva and his companions authorization to leave the country, due to his alleged involvement in the bomb blasts which took place earlier that month in Semerang. All those detained, in Dili and Semerang, in connection to this incident, including Avelino's brother, Adelino Coelho da Silva, have been severely tortured. The way the Indonesian authorities have handled their cases raises fear that the asylum seekers at the Austrian Embassy would risk torture or 'disappearance' and would not, in any case, be granted a fair trial if they were to leave the Embassy. Thirteen cases of asylum bids by East Timorese have already been registered in 1998.

EXCESSIVE MILITARY PRESENCE

Indonesia's overwhelming military presence has an enormous impact on the human rights situation and is undoubtedly the cause of serious tensions as people are at all times reminded that they are under a repressive military occupation. Human Rights Watch reports that 'Indonesian military forces in East Timor include regular police, mobile brigade police, troops from Indonesian infantry battalions, units of Indonesian special forces (Kopassus), at least one air force battalion,

local territorial troops, a variety of paramilitary forces and an extensive intelligence network. [...] The current number of troops is not certain. In 1993, the Indonesian army had eight battalions in East Timor, each comprising 700 men. Two were withdrawn in 1995, but any reduction in troops was more than offset by the creation of local battalions, as well as by a variety of military and paramilitary groupings'.

These paramilitary organizations such as the Gardapaksi (Youth Guard for Upholding Integration), recruit East Timorese youths and give them military training. Gardapaksi youth are paid to take part in specific actions, such as mounting counter-demonstrations to pro-independence rallies and are said to be given special incentives, such as better housing, access to university (Human Rights Watch/Asia; September 1997, Vol. 9, No. 9 C).

Recruitment of East Timorese into military ranks and paramilitary groupings heightens tension amongst the population and causes a climate of suspicion which often results in disturbances and violence, leading to further retaliation by the security forces. Concern is held that, if the underlying human rights problems are not seriously addressed, this climate may lead to a radicalization of the situation.

MASSIVE INDONESIAN MIGRATION

Although in recent years Indonesia has significantly reduced its official transmigration programme, Indonesian migrants have continued to flow into the territory and have received indirect Government support, in the form of development assistance or contracts with the armed forces or local government.

Massive Indonesian migration and exclusion from employment (including civil service) and development opportunities have caused resentment among the East Timorese, in particular amongst the younger generation who is the most affected by the high level of unemployment prevailing in the territory (63 per cent, according to Rui Gomes, in 'Administering Development in East Timor', Murdoch University, 1997).

HUMAN RIGHTS MONITORING

[...] The establishment of the Indonesian National Human Rights Commission (Komnas HAM) was greeted with satisfaction by the UN Commission on Human Rights. However, while Komnas HAM has made positive efforts in investigating human rights violations, the Indonesian Government has failed to act upon its findings and recommendations.

In any case, its work should complement, not be a substitute for international and independent monitoring. Unfortunately, no new efforts were made regarding the envisaged assignment of a programme officer from the Office of the United Nations High Commissioner for Human Rights to the UNDP office in Jakarta, who should also have unhindered access to East Timor [...].

Furthermore, in spite of the Commission's recommendation and the Indonesian Government's commitment to cooperate with the Commission and its thematic mechanisms, no Rapporteurs or Working Group were invited to visit East Timor during 1997. [...] Credible international NGOs, such as Amnesty International and Human Rights Watch, also continued to be banned from the territory."

Annex III

MATERIAL PROVIDED BY NON-GOVERNMENTAL SOURCES

1. Reports about the human rights situation in East Timor were received from NGOs such as A Paz é Possivel em Timor-Leste, Amnesty International, the East Timor Human Rights Centre based in Australia, Human Rights Watch and the World Organization Against Torture. A summary of those reports is contained in the following paragraphs. Letters were also received from individuals and non-governmental organizations urging for United Nations human rights monitoring in East Timor.

2. The reports indicate that the 29 May Indonesian election was accompanied by a wave of violence in East Timor. A series of armed attacks by the Falintil guerrillas on Indonesian military and police targets in Dili, Baucau and Los Palos resulted in over forty people being killed, including members of Falintil, members of the Indonesian police and armed forces as well as East Timorese civilians. Some sources indicated that the attacks resulted in the death of at least 50 members of the Indonesian security forces. The military operation launched in response was targeted at East Timorese people allegedly involved in the Clandestine Front or the armed resistance. It was reported that in June and July military teams rounded up systematically large numbers of people, detaining them for days or weeks without a warrant or detention order, and intimidating or torturing them so that the army could get information about possible suspects. After the election, a curfew was imposed in Dili, prohibiting local residents from being outside their homes after 6.00 pm.

3. One source reported that between January and July 1997 it had received reports of extra-judicial executions of 49 East Timorese people, many of which took place in the period immediately surrounding the election. Most of the suspected extra-judicial executions have so far not been investigated by the Indonesian authorities.

4. One death which received widespread attention in June 1997 was that of guerrilla commander David Alex who allegedly died in custody after being shot by members of the Military. The circumstances of his death remain very unclear, despite an investigation by Indonesia's National Human Rights Commission.

5. It was reported that one of the most serious problems in East Timor continues to be that of arbitrary detention. The problem is exacerbated by the number of different units of the security forces involved. Under the Indonesian criminal procedure code, only police are authorized to carry out arrests, but in East Timor, not only the army but even the civilian militia take on this function. Detention in East Timor can be arbitrary in several different ways. It can be arbitrary because those carrying out the arrest and detention are not authorized to do so under Indonesian law. It can be arbitrary because the persons detained are shown no warrant, given no reason for their arrest, and have severely limited access to legal counsel. It can be arbitrary because it is based solely on information extracted under torture

or other duress. It can be arbitrary because the law under which detainees are held is itself so broadly worded that its application often constitutes a violation of the right to freedom of expression or assembly.

6. One source indicated that some 700 East Timorese were said to have been arrested between January and July 1997.

7. On 23 March, about 250 East Timorese youths participated in a peaceful demonstration during the visit to Dili of Mr Jamsheed Marker, Special Representative of the Secretary-General. The youths marched to the hotel where Mr. Marker was staying, entered the hotel and handed a representative of Mr. Marker a petition protesting the Indonesian occupation of East Timor. It was reported that immediately after the representative returned to his room, soldiers from Battalion 744 and members of the Indonesian police blocked all exits and began indiscriminately firing at the youths and beating them with bayonets and rifle butts, forcing them to disperse. Some of the youths broke hotel windows in order to escape. It was reported that at least 51 East Timorese were injured in the incident, 21 of whom sustained gunshot wounds while another thirty sustained injuries from bayonets and broken glass. At least 33 were arrested and charged with crimes such as causing serious bodily harm to others, publicly showing hatred towards the Indonesian Government or disobeying a command by the authorities. There are conflicting reports about the number of people killed, but sources indicated that there were some casualties, despite the authorities' denial.

8. Another incident reported was the one which occurred on 14 November 1997 inside the university campus in Dili, two days after a peaceful demonstration took place to commemorate the sixth anniversary of the Santa Cruz massacre. At least eight students sustained serious gunshot wounds and many more were arrested when troops opened fire on students.

9. Sources also indicated that torture continues to be endemic in East Timor, a method used to get information about suspected guerrilla activity or to force confessions. Standard methods include application of electric shocks, burning the skin with lighted cigarettes, placing the hand or foot under a chair or table leg which the interrogator then sits on; and kicking and severe beating, sometimes with pieces of plywood, pipe or electric cable.

10. The perpetrators can be any branch of the military, including the police, but the most feared interrogators are those from Kopassus, the army special forces, and the various joint counterinsurgency teams they command. Torture is reportedly carried out primarily in police stations and military posts or intelligence safe houses immediately after arrests. Suspects may also be taken from their homes into forest areas in the vicinity and tortured for information there, where there may be less danger of word filtering back to local human rights monitors or the ICRC. Torture has even apparently become a source of income for individual officers in East Timor who are

selling photographs and even videotapes of interrogation sessions to the highest bidder, with the price rising as more details (such as where and when the interrogation took place) are included.

11. Reports further indicate that a significant factor contributing to the ongoing cycle of human rights violations in East Timor remains the lack of investigation into the abuses. It remains the exception rather than the rule for inquiries to be held into killings and disappearances. Where investigations have been conducted and members of the Armed Forces convicted, the punishment handed down to those found responsible does not adequately reflect the seriousness of the violation. No case of torture or ill-treatment is known to have ever been investigated.